

July 21, 2003

Mail Stop Comments - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450
ATTN: Mr. Robert Clark

Re: OG Notices: 17 June 2003; Docket No.: 2003-P-018; Notice; request for comments due on or before Monday, July 21, 2003.

SUBJECT: Issue 10 "Do you have other solutions to offer which are not addressed in this notice?"
Problem: Encouraging invention-innovation global marketing cycle;
Solution: Restoration of inventor rights and privileges (similar to other countries), and
Improvement of inventor-innovator support programs. Growth in innovation results
from
IMPROVEMENT IN MARKET SPECULATION ODDS.

Dear Mr. Clark;

Your fine agency offers a broad range of outstanding services supported by an excellent staff. It seems truly a global forefront agency and many good changes have happened over the last 10 years. I look forward to your continued good work in support of invention and the innovation process, which (of course) should encourage the inventor to develop their skill(s) and also promote and develop their invention. Thank you for this opportunity to offer my opinion.

I am also grateful to invention programs promoted by the Federal Government Agencies such as they Small Business Administration and the National Science Foundation, and the various other inventor-innovator programs found within the Department of Defense (and its internal force departments). These very fine and competently staffed inventor-innovator programs receive highly variable funding from Congress, and seem not to be given the bright and warm centralized description they justly deserve. For further information about their fine programs, please contact these very helpful agencies (whose programs change often). Hopefully some common office may be created to coordinate their and other agencies efforts such that the time and expense of inventor-innovator error and fumbling about may be avoided, and both institutional (such as University) and private sector development may be encouraged.

However, I feel the independent and undercapitalized inventor is slowly being displaced within the American economy due to increasing costs (both government and private sector), disappearance of American productive capacity (which inflates the cost of the remaining capacity), and a change in culture that seems to dissuade private innovation in favor of much lower risk endeavors (such as importing, retailing, and services).

The United States Patent and Trademark (USPTO) front-line customers are the inventors by Constitution mandate. Article 1, Section 8, Clause 8 of the United States Constitution provides for some mechanism whereby Congress may have a means for exercising its "Power" over "Authors and Inventors", "To promote the Progress". While the Constitution seems to be specific that one form of encouragement is that rights may be granted or "secured for limited Times" for the authors and inventors, it also provides language that military forces should be provided for by Congress (Art. 1, Sec. 8, Clause 12 (Army), 13 (Navy), 15 and 16 (Militia (States)), and 17 (sites for military significant structures)) and commanded over by the President (Art. 2, Sec. 2). Thusly, it seems proper that inventors (which have military significance) should be granted some exclusive right as an underlying broad right and also should be provided for under some inventor/innovator encouraging Armed Services option(s) (depending on the specific situation) so that

the innovation cycle may be continued (to overcome State Professional Licensing and other objections as hereinafter discussed). The patent in itself does not necessarily promote invention development, but seems to retard the advancement of commerce through the inventor's lack of production rights and having only the power to deny progress in science and the useful arts (35 U.S.C. 154 (see below)). Few inventions are commercially viable in the first generation. Product development must have cash flow to finance the services, materials, and capital equipment and facilities requirement for its development ... and this usually comes from first a cash reserve (such as a loan or savings), and then later as a percentage of cash flow from marketing a product and/or services. Without this cash flow from sales, the research itself is draining of ones substance and energy with (on average) little chance (low composite odds) of reward. Absent the right to produce and/or innovate under some program, the most substantial opportunity for gain involves the retarding effect of suing copiers (35 U.S.C. 271) in a court of law. Litigation is consuming of much time, cash flow, and market opportunity and seems generally destructive to commerce.

Additionally, the USPTO should unify export classifications and certifications between the USPTO, the Dept. of Commerce, the State Department, and other Federal agencies such that all Sovereign concerns relating to export of technology, information, and services are simply stated to the inventor, and may be coordinated through the USPTO for the Sovereigns satisfaction. Disconnected laws focused on innovation and trade concerns may be scattered through multiple under funded agencies. Having to deal with many agencies may bring confusion and difficulty, as well as substantial losses of time, money, and opportunity to an inventor-innovator as they navigate this increasing bundle of legal red-tape.

The USPTO is already a part of the Department of Commerce, and is the intellectual property hub of the United States. A simplified trade coordinating role (for inventors) seems best expressed from this office as it is already connected with trade matters. Advisements and clearances seem already a matter of its function (see U. S. law such as Title 35 USC Section 181-188).

M A R K E T , P R O D U C T I O N , L A B O R , A N D P A T E N T S

The scope and power in terms of making, selling, and using one's product is controlled by the definition of productivity rights and enforcement powers offered under U. S. Congressional law. This law competes with the differing scopes and privileges offered by other countries. In an open global economy this may invite company relocation and location site comparisons when a company may determine in advance where a product may be manufactured and also where it may be sold. This kind of decision liberty seems best afforded by highly capitalized (large) companies who can afford to create and move large asset blocks around the world like Monopoly Game pieces. Their capital often comes from well defined institutional sources who value companies and their potential based on changes in global market dynamics and cost (productivity). This tactic seems least available to those who cannot afford to travel or run the risks associated with bundling product value to allow for ship and trading over long distances.

A start-up inventor seems usually much different than those who are both highly capitalized and have substantial global market entrenchment. Like any other form of labor, a start-up inventor-entrepreneur may wish to be reimbursed for their time and be able to raise a family from their income. A 100% increase in in-house manufacturing employment consists of hiring their first person. Increasing the number of road-blocks (such as additional government fees and regulations) not only drains scarce venture start-up cash resources, but may also increase mandated personnel burden (with increased training time and cost) and risk (both in product information security and warranty risk reserve). Professional employment mandates and government documentation and licensing requirements have risen over the years (in State and Federal Law), and this has been dissuading to domestic new market entrant prospects. In the State of New York (1980's), when new Federal Export regulations came into effect, export trade rapidly decreased as a consequence; and the trend was not turned around until the State of New York set up offices to assist manufacturers in clearing this hurdle. I do not know if the State of New York continued with this trend (which was helpful toward manufacturers). Many commerce assisting government agencies (including the USPTO) has had

substantial government budget cuts over the last two decades ... when exactly the opposite should have taken place.

Entering a market place has not only become more technologically complex and capital intensive, but Federal and State barriers to internal development of trade has increased in cost. Overseas competition has undermined many fundamental principles of domestic location economics. Many foreign competitors do not have to deal with the risks and burdens of manufacturing in the U.S. (that is why it is cheaper). I would hope the U. S. Patent Office, the U. S. department of Commerce, the U. S. State Department, and the several States continue to research this problem for the benefit of their local inventor-innovators (they are the seed corn of new industry).

Inventors (for the most part) have little free capital. The most usually successful finance technique is re-investment for growth under traditional "boot-strap techniques. It seems not uncommon that a 10-15 year long iterative and speculative industrial development cycle is needed for inventions. Therefore, speculation must be rewarded in order for speculation to exist (it seems not logical to invest in anything which loses ones substance (money) and time (which converts into money), as all effort and capital should flow toward rewarding enterprise(s) or job(s)). If they are unable to profit and save money, they can not have families and retire someday. Inventors should have simple requirements waved (such as license tabs and fees associated with test vehicles and platforms, and property taxes relating to structures and office space used for development purposes). If the invention being developed involves satisfying some function which is mandated under State and federal Law (such as an improved water propulsion safety device which improves propulsive efficiency, reduces risk to swimmers and aquatic life, and reduces underwater noise), then State and Federal agencies should provide specific salary and overhead guarantees through grants and contracts, as well as specific State and Federal laws and programs which may reduce trade risk.

I would hope the goal in any "21st Century Strategic Plan to transform the USPTO into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system" would be to increase value to the customer. In this case the customer is the inventor-innovator and the American Tax Payer. If long term sustainable tax revenue to the Federal Government is the goal, then the highest level of support, service, and loyalty should be paid to the inventor-entrepreneur. It is he or she who creates an exportable product and has the ability to create jobs for others. Any reduction in trade risk will (by definition) improve inventor-innovator odds of success, their profitability, and their taxability. If production and cooperation is to be encouraged, then rights need to be improved (similar to past patentee rights) and fees should be reduced (to levels similar to the past) for U. S. inventors who are networking with other small entities, and also are U. S. developing, making, and selling their inventions. Taxes and regulations (which takes away ones substance and time) impact the inventors availability of seed capital and their ability to re-invest. time and money into their innovation. The logic behind this is below described.

Unfortunately, in 1952, U. S. Federal Patent Law removed the inventors public right to make, use, and sell there own invention, but rather the inventor may proceeded absent some instant objection (which may carry heavy fines and penalties):

"It should hardly need saying that the issuance of a patent gives no right to make, use or sell a patented invention, or that the absence of a patent creates no legal prohibition against continued research and development." Animal Legal Defense Fund v. Quigg, 932 F.2d 920, 935, 18 USPQ2d 1677, 1689 (Fed. Cir. 1991)

Gains from an invention results from the invention being sold and/or used by others (in commerce) and some cash flow (above expenses) being returned to the inventor. The most direct path to gaining profit from many inventions is to be able to make it oneself and sell it into commerce (and make a profit to pay for ones time and energy). "Selling an invention" (see statistics on "invention developers") seems a riskier undertaking than waiting to be prevailing in an expensive infringement patent law suit. The lowest risk and greatest odds of innovation success (excluding political interference variables) comes from developing and making a pioneering product, and where the odds are improved by issued patent(s) and government market encouragement..

To foster domestic growth, additional rights and privileges should be granted U. S. inventors above those who are not inventors (such as union wage labor or union professional labor), and it should encourage their further participation efforts in the field. It should make every effort to preserve their substance and reward past efforts and risks taken, as many times the inventor comes from some economic hardship (is gaining income elsewhere to support development of their invention for the benefit of others). The inventor-innovator must both deny current consumption and speculate on the future value of their time, and risk possibly spending decades on unrewarding efforts. The iterative approach to marketing and innovation is reward guided by functional strategy. The U. S. Constitution philosophy (according to McCarthy's DESK ENCYCLOPEDIA OF INTELLECTUAL PROPERTY, second edition, ISBN 0-87179-899-9, under "Constitution") seems to be:

"The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.' Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." Mazer v. Stein, 347 U.S. 201, 119, 100 USPQ, 333 (1954: Copyright case).

Thus, an inventor should be given a pathway wherein they may be paid or rewarded for their time and risk, but under the law of the United States this has been taken away per above and as explained below. The laws of other (competing) countries seem different as specific rights to produce are still granted (such as in Germany, France, U.K., etc., please correct me if I am wrong), but in addition the failure to produce may have ones patent production rights forfeited (such as in Mexico). Similarly, these countries offer lower product liability including damages ceilings, and also have less trade and professional restrictions. This lowers new product research costs, limits losses, and increases capital odds of success.

Under the U. S. Constitution Amendment 10 the several States should encourage inventors by reducing inventor (patentee) specific costs and risks, and give them specific trade rights (such as a permit to haul passengers from a specific location as they attempt to develop germane equipment specific to answering their State Laws). But this requires an alert legislature to promote this, as encouraging regulations and programs must be created (they do not grow out of thin air). Many precedents in history exist here, and it includes the history of steamship development and their routes, as well as trains and aircraft manufacturing and routes. Inventor-innovators have a recognized history of doing economic development work (most everything we touch seems invented by someone). This seems historically beneficial to the several States and the Federal Government, as well as the world. Inventor-innovators are fundamental to the successful expansion of civilization, and there economic linkages are well published in foundation economic works used in both market and Marxist foundation economic thought (see late 18th and early 19th century economists such as Smith and Ricardo).

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Constitution of the United States, Amendment 10.

"The [constitutional] Patent Clause itself reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and the useful Arts.' ... Taken together, the novelty and nonobvious requirements express a congressional determination that the purposes behind the Patent Clause are best served by free competition and exploitation of that which is already available to the public, or that

which

may be readily discerned from publicly available material ... [T]he Patent and Copyright Clauses do not, by their force or by negative implication, deprive the States of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions."

Bonito Boats Inc. v. Thundercraft Boats Inc., 489 U.S. 141, 146, 9 USPQ2d 1847, 1850, 1852, 1858 (1989).

L O S S O F R I G H T S

Please correct me if I am wrong, but per above 1952 U. S. Patent Law the right to produce was taken away from inventors. Title 35 U.S.C. sec. 154 (1986): provides for only "right to exclude others", while under Copyright Law the author has "the exclusive right to do and to authorize" (Title 17 U.S.C. sec. 106 (1977): an inventor seems to author (produce written works) as well as (in addition) he or she may produce a useful artifact). Prior to 1952, Title 35 U.S.C. sec. 40 stated that upon a patentee being granted a patent, he, "and his assigns, for the term of seventeen years, of the exclusive right to make, use and vend the invention or discovery throughout the United States and its territories thereof."; e.g., seems to have had a right to produce similar to copyright law. In the original Patent Act of 1790 (First Congress, Session II, Ch. 7, 1790), sec. 1 states that patentees may have the "exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery." (The Public Statutes of the United States of America from the Government Organization from 1789 to March 3, 1845 ... Edited by Richard Peters, Esq., Vol. 1, Boston: Charles C. Little and James Brown. 1850). It was therefore made clear that an inventor had a right to produce subject to Sovereign objection. Many States began enacting professional licensing laws in the late 1940's (such as Washington States RCW 18.43.010 et seq.) which began to define engineering disciplines and mandate the employment of professional engineers in their costly services ... which gained momentum in the 1980's such that they had to be employed continuously and by discipline. The exception to this was if the inventor was employed by the Federal Government to do their work. While the ideal case may be to have a product designed and built by a staff of highly paid and well organized professionals contained within an enlightened and sensitive society (where all risks and harms are compensated for), the actual case is that few can afford this. Some measure of deference should be given to inventor-innovators who are willing to respond to the challenges offered by changing society and law (such as environmental law), and creates a product which progressively emerges to answer these demands. Federal Government protections seem required.

The reduction in status may follow the original political thinking through the origins of the 1623 British Patent Law (21 James I, c. 3) "Letters patent and grants of privilege for the term of fourteen years or under, hereinafter to be made of the sole working or making of any manner of new manufactures ... to the true and first inventor or inventors ... so as also they be not contrary to the law, nor mischievous to the state, by raising commodity prices at home, or hurt trade, or generally inconvenient.". I submit that the growing disharmony between the law seems to violate the crystal clarity of original Sovereign thinking, especially since this disharmony seems counterproductive and expensive on its face when compared to the law of other countries, and becomes particularly confusing where the parties are set adrift in a sea of confusing laws controlled by Federal agencies who's fine members themselves not only do not seem to have been given the personnel and budgeted resources for clear guidance, but no Congressional mandated (and Court encouraged) incentive programs have been initiated to promote an inventor-innovators speculation and progress in global markets. See Title 35 U.S.C. sec. 183 compensation rights case __Haynes v. U.S.__, CA FC 98-1458 (decided Nov. 6, 1998), also S. Ct. 98-1587 (certiorari denied, petition for rehearing denied) and __Patent Disclosure Hearings Before Subcommittee No. 3 COMMITTEE ON THE JUDICIARY House of Representatives Eighty-Second Congress First Session on H.R. 4687__, August 21, 1951; Serial No. 22 Printed for use of the committee on the Judiciary). An inventor may naturally fear they have received the displeasure of the Sovereign when their U. S. Patent Application has received a "SECRECY ORDER" per 21 James (I, c. 3) cite above of "so as also they be not contrary to the law, nor mischievous to the state, by raising commodity prices at home, or hurt trade, or generally inconvenient." at least until such time as otherwise advised (see 22 C.F.R. sec 120.4 "ITAR" et. seq. for an outline on the long procedure involved in a "Commodity Jurisdiction Request" ... which seems a substantial, time consuming, and costly document to prepare without government sponsorship; and likely this information and development process should be government funded). Due to the contraction in U. S. Government which seemed to begin under the Reagan Administration, the rare and highly trained U. S. Government people who work on this issue seem to be in Washington, D.C. only, and a substantial cost and commute must be endured by an inventor to deal with the invoked issues. I better mechanism needs to be created which both honors the value and

potential contribution of the inventor-innovator, and the needs of this honorable office (both the USPTO and the U. S. State department).

I M P R O V E D V A L U E I N S P E C U L A T I O N

I have heard that the difference between a gambler and a businessman is that a gambler takes risks while a businessperson manages risk. In both cases they look to the future for an income. To make assumptions on the future, absent a specific contract, is speculation (a guess). The value of anything is speculation absent the actual point of irrevocable value conversion (beyond which must be considered risks and perils). The value of currency is speculative. One is asked to speculate to the IRS on what their income may be over the year in paying their taxes. One must speculate on their future income when taking a loan. A farmer speculates on many factors when they sow their crops and look to the future with regard to their crop markets, weather, and potential harvest as a result of their scientific and repetitive actions. I would hope the role of government is to improve the odds of success of large businesses as well as the private citizen who are starting and speculating on their future. I hope Government is reducing the linkages and sources of dangers to commerce, and hence is reducing the scope of speculation. Otherwise, the inventor-innovator would be foolish to pay extra money for a business license, invest their savings and time, as well as their personal energy to be treated less well as, say, a union laborer who operates under a contract (and has many State and Federal protections) and does not take these risks to their potential income.

Reason would seem to serve a remark made by Thomas Jefferson to Mariwether Lewis of the to be Lewis and Clark Expedition, that great risks (speculation on outcome) deserve great rewards (to compensate for labor, hardships, and odds of loss).

In the past, Congress has authorized special concessions such as land and/or transportation route monopolies (such as with the railroads and airlines) to compensate for great risks. But this has changed in the last few decades with government movements toward deregulation. Many businesses have moved overseas where costs and laws were favorable, and have exploited their U. S. marketing position against U. S. competition. The effects of this "service based" governmental thinking can be seen in shrinking domestic manufacturing and uncertainty with the growth of the U. S. trade deficit, as well as uncertainty within the inventor-innovator community which must deal with existing U.S. Law, costs, and speculation over a long term. I would hope that rules, regulations, and incentives may be harmonized in such a way as to improve inventor odds of success, particularly when the inventors creation and interests answers and addresses the needs mandated specifically by State and Federal Law. I would hope an agency may be created to study and promote implementation strategies for the matter (such as an OFFICE OF INNOVATION RESEARCH).

Determining relational product positioning and an understanding of the length of time patent and copyright rights may exist (if an invention is commercialized) improves innovators ability to make quality investments in equipment, facilities, jobs, labor contracts, and agreements with local, state, and larger jurisdictional government entities. With this improved reduction of risk and understanding of the market place, a manufacturer may make higher quality judgments with regard to projected revenue streams and an ability to be a long-term supplier of goods and services. If the U. S. Patent Office fails to encourage commercialization and market speculation, then to the degree this failure exists our domestic commerce and marketing efforts may be discouraged and our American Commercial Innovation may lag behind other areas of the world. I believe this is not what Article 1, Section 8, Clause 8 of the United States Constitution had in mind (see below). Thus, as has been evolving in the film and music industry, a system of methods must be found wherein inventors and authors do not act against each other to retard commerce, but rather their contributions may be properly integrated and compensated for in its advancement. The past USPTO high quality work on examining each specific claim has contributed much toward identifying and integrating the historical role of each inventor. What has been lacking has been the ability to smoothly integrate the

inventor into the innovation and commercialization cycle wherein speculation is minimized and proper compensation (over the contribution cycle) may be received.

I S S U E T E N

The following relates to "Issue 10" in the above, and the fundamental usefulness of a U. S. Patent ... not only to the inventor but also the producer of the product and the customer using the product as well. I believe special consideration should be given to start-up inventors and innovators, and clearly defined affirmative producing rights (for promoting progress in the useful arts). This should be particularly true of inventors subject to special U. S. Patent Law such as Title 35 USC Section 181-188, and should include tax (both State and Federal) and fee discounts and application prosecution assistance.

A friend of mine who keeps up with United States Patent and Trademark Matters (USPTO) recently passed to me a download from your website (<http://www.uspto.gov>) a document which requests comment from the public regarding a USPTO internal movement which states the USPTO has:

"established a 21st Century Strategic Plan to transform the USPTO into a quality focused, highly productive, responsive organization supporting a market driven intellectual property system."

To be absent in giving a commercial right to produce as a matter of law, as well as crafting outside agency objections and procedures, is to raise the odds of commercial failure and increase the cost of doing business (possibly to the point of creating a situation where the small business will be unable to overcome the incremental increase in their odds of failure (at least in part created by increased fees, time burdens, professional costs, and loss of opportunity due to inability to attend to customer needs and/or customer's desire to avoid issue problem). The prospect of commercial failure then becomes certain when the small company or concern has insufficient resources (time and money) to overcome the government burdens set upon it, and also answer the demands of research and the market place.

I am the inventor of and was once the producer of the Wolfpak Marine anti-Coanda effect waterjet propulsion system, and sold many successful units worldwide. On December 18, 1987 your office issued a secrecy order (SO) on the evolution of my device (the subject patent itself had the SO removed in 1990, but triggered affects at law seem to remain) and this has been a puzzle and hardship ever since. Secrecy Orders seems to have affected tens of thousands of inventors since the Title 35 U.S.C. sec. 181-188 beginnings, and is issued newly to hundreds of new inventors every year. In my above-cited __Haynes v. U.S.__ case (CA FC 98-1458), no program exists from Congress although the original law and judicial opinion seems to promote one. E.g., Congress seems to have run out of time and money in discussing the complex issues, and left the problem to the high cost of attorney debates and the very pressed schedule of our understaffed and under funded Federal Courts. To me this seems a real waste of invention and innovator experience and potential talent (as well as a vast waste of American legal resources) ... that can be recruited and better used to not only reach into the global trade and resource experience (for international diplomacy), but also to develop resource and trade options beyond what currently exists. Strategic benefit may possibly be made of this to the end of benefiting U.S. domestic and military supply from varied locations inside the United States, and also abroad. Research information specific to devices under consideration (as well as valuable data about regional resources and cooperation) may be possibly developed using the unique advantages and cultures of peoples throughout the United states and across the globe. For simplicity, it seem to me that the Department of Commerce and specifically the United States patent and Trademark Office should host some clear and centralized portion of this procedure in keeping with cooperation with the U. S. State department and 22 CFR part 120 "ITAR" simplified guidelines, and provide a funding base for such endeavors. Currently no such Congressional grant or agency sponsored programs seems to exist (see __Haynes v. U.S.__ cited above. Case tested availability of services, and this was denied as a matter of law. Lower Court opinion on summary judgment motions said Haynes would need to lobby Congress for a change in the law).

I wish to congratulate the United States Patent and Trademark Office for the fine work it has been doing over the years to make it more useful to inventors. What I am suggesting here seems to be consistent

with its current agency direction. I have found the USPTO honorable, supportive, and necessary institution useful for the orderly conduct and positioning of inventors and products in the global market place. But the uncertainties within its grand experiments tend to be difficult on any who must take the issues to task in the complexities of court. The USPTO must provide what is needed for the protection of innovator market pioneering effort. In particular, tools should be developed which both reduce inventor-innovator costs and save their time (rather than increase costs and misdirect the valuable inventor-innovators time). Otherwise this valuable and often under-appreciated effort(s) may be squandered, and be subject to displacement when lower costs foreign competition enters not only the expanding market (through penetration and capturing strategies), but also disturbs the innovators expanding regional job and supplier base (and the evolving community resources may be disturbed as well) as the market sales and supporting production potential are taken over. How to balance the location and law judgments related to benefiting the community and the Sovereign may often be outside the resources available to the inventor-innovator, and Sovereign intervention may be welcome (for their common benefit).

Without Sovereign intervention, innovation by the inventor seems often done at great personal hardship and capital loss. Near term profits (money received beyond mere subsistence income and the paying-off of creditors) are then converted for access to then growing and identifiable (established) markets. If an undisturbed invention iteratively progresses toward institutionalizing the production effort, the market yields are converted into human resources composed of various classes of supportive labor and professional jobs. This may rely on protection of economic community relationships in a global "free trade" market driven economy. Unfortunately, it is my impression that Congress does not give your office, your final product (and the fundamental rights needed by innovators) its rightful impact, reach, and protection it deserves. Without protections, it seems difficult to negotiate long-term labor, community government, and Federal government relationships due to the depth and breadth of market and other commercial unknowns (variables and linkages in speculation equation may grow too large for any agreement at all to exist). A substantial unknown is the support (or lack of it) that may be offered by Government. Companies which have had the support of their government and communities have commonly done better than those which did not.

As I watch well pioneered and established domestic markets being taken over by foreign countries with lower costs of production, I watch domestic manufacturers respond by being forced (by costs and incentives) to keep their marketing operations here and dislocate production abroad. The result is community based manufacturing is collapsing, and as it collapses it throws the cost of start-up of the lost supplier or contractor capacity (such as a foundry and machining) on any new entrants (they must buy their own equipment and train their own people rather than having a low cost contractor to subcontract work to). This becomes an enlarging financial burden (in addition to what the enterprise would have had to do if a larger shared and more supplier rich economy was present). If the decline grows great enough, manufacturing may become rare or disappear altogether as not enough "shared" or job-shop resources exist to support start-up enterprises (all capital for machinery, facilities, and labor must come from a single source rather than be shared by distributed local trade agreements).

There seems a sad misconception that manufacturers "compete" in an adversarial way. In a true free market system where technological positioning is respected (and in which the USPTO plays a role), what takes place is closer to resource sharing and an informal balancing of position as all grow the industry and the resources of the country. They share "job shop" manufacturing resources. They share trade show space (but at different spots) and they work together their and in the media to promote the general market while attempting to convince the customer about their own position. To me, this seems the ideal case. However, a broadening of legal disharmony has bloomed outward in the last 50 years with a change in the "order" of things within the 1952 patent law change (see above), the shift in thinking during the greatly admired President Jimmy Carter Administration, and in the last few years, an interest in modified free-market thinking (with the fine theory of global "mutual dependency" promoted by mid-1990's Speaker of the House Newt Gingrich (R. Georgia)). I would hope a conservative approach to maintaining U. S. manufacturing productivity and Security is considered in such a way that inventor-innovators are also encouraged to participate.

While the idea of professional licensing seems a good one, it is also trade partitioning by discipline and is also trade exclusionary (takes business away from those currently engaged in focused trade by declaring the unlicensed as unlawful). Washington State's RCW 18.43.010 et seq. seems to specifically promote excluding unlicensed inventor contributions, and seems to contribute to the loss of control of proprietary information (other states have similar statutes). On its face this may create significant difficulties when dealing with defense applications related art (under Ibid. RCW 18.43.010 et seq., working for the Federal Government seems to be excluded and thus the Federal Government programs may become a safer haven if the inventor gets the opportunity to work for a Federal Government agency). Published case law seems to clearly demonstrate that intent as well; e.g., it seems to retard progress in the useful arts outside of government control. This may be because published case law contains issues under dispute only and may only rarely refer to promising and evolving positive programs that may be openly displayed elsewhere (such as through the Small Business Administration) ... and thus case law tends to form a dismal interpretation of summed events. If it is indeed the case that private enterprise is being discouraged and centralized government control of industry is being encouraged, one investing their time and energy in the free market system of that venue has only one rational course ... and that is to invest their time along what seems the most rewarding course (which may likely be to shut-down the endeavor if fines or other political harms are involved). Under USSR and "Red" China early policy, free enterprise was at first discouraged and then it was finally made unlawful, and this seemed to reshape the development of their economies as free enterprise innovation and speculation disappeared under the weight of a system of centralized state-run contract controls. In the last decades Russia and China policy has been undergoing revision. Fortunately, the United States has never dismissed the advantages of the free enterprise entrepreneur and inventor-innovator, as the loss of innovator productivity has been well understood in ancient free-man trade writings (and Roman commentary) and repeated in early 19th Century Congressional testimony.. The "power", or option, of the U. S. Congress relating to inventors seems to suggest (Goldstein v. California, 412 U.S. 546, 555, 178 USPQ 129, 133 (1973)):

"The objective is to promote the progress of science and the useful arts. As employed, the terms 'to promote' are synonymous with the words 'to stimulate,' 'to encourage,' or 'to induce,' To accomplish its purpose, Congress may grant to authors the exclusive right to the fruits of their respective works. An author who possesses an unlimited copyright may preclude others from copying his creation for commercial purposes without permission. In other words, to encourage people to devote themselves to intellectual creation, Congress may GUARANTEE to authors and inventors a reward in the form of control over the sale or commercial use of copies of their works."

If the USPTO wishes to be an efficient global "market" economy focused free enterprise tool, I would hope one of its early responses would be to survey its customers needs, problems, and goals, and create a product (and efficient product delivery system) which answers these needs in the name of the United States. Specifically, the USPTO needs to decide what activities they wish to encourage. Do they wish to encourage domestic manufacturing, and/or do they wish to retard the progress of science and the useful arts (by inventors who wish to deny the marketing of their inventions (exercise only their "power to exclude others", and deny the market their innovation ability (which may be encouraged as a result of State Law as many may not be licensed "Professional Engineers, and cannot afford the high cost of engaging same)). In the latter "deny" case, if the USPTO wishes to turn this around such that inventions are "promoted", a survey should be done as to what blocks the inventions further progress in the United States (and why would it be more favorably developed elsewhere in the world like many successful global manufacturers do).

In both cases above (commercial and military), a better effort should be made to a) improve the reach and strength of the U. S. patent instrument; b) control costs such that the bootstrap inventors and/or innovators have more funds to invest in their research and commercialization, and c) make greater effort to integrate their future efforts into an institutionalized entity (particularly the military or other government agency in the case of 35 U.S.C. sect. 181-188 issues) ... which may provide a personal success umbrella while the inventor and/or innovator pursues advancing the organizational interests (such as an OFFICE OF INNOVATION RESEARCH)).

Thank you for this opportunity to comment,

Respectfully,
H. W. Haynes (Draft Only)

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